IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4151 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

HIRABEN NAGARDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S NJ MEHTA ASSO. for Petitioner

Ms MANISH LAVKUMAR, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

MR RC JANI for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/06/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, a primary teacher has challenged the order passed by the District Primary Education Officer, Mehsana, as confirmed by the Tribunal under the Bombay Primary Education Act, 1947 (hereinafter referred to as

"the Act") imposing upon the petitioner penalty of withholding one increment with future effect and also the order of withholding House Rent Allowance on the ground that the petitioner was not residing at the place where she was discharging her duties and, therefore, the education of the students was suffering.

2. The petitioner was appointed on the post of Primary Teacher in 1971. Her initial posting was at village Vamaiya, Taluka Patan, District Mehsana. The petitioner was thereafter transferred to another village called Jangral and thereafter to Vaghdod with effect from 1.1.1985. The petitioner was served with a notice dated 31.12.1988 from the District Primary Education Officer, Mehsana calling upon the petitioner to show cause why the House Rent Allowance paid to the petitioner should not be stopped and such allowance paid to the petitioner in the past should not be recovered as the petitioner was not residing at Vaghdod and was daily commuting from Sander to Vaghdod and that on account of her residing at a long distance away from the school the petitioner was not performing her duties properly. The petitioner was called upon to show cause why departmental action should not be taken against the petitioner. The petitioner was required to give her reply within a week. The Disciplinary Authority did not receive any reply to the above notice and ultimately the Disciplinary Authority i.e. respondent No. 4 herein-District Primary Education Officer passed the impugned order dated 1.3.1989 stating that as the petitioner was not residing at Vaghdod, payment of House Rent Allowance paid to the petitioner was required to be stopped and House Rent Allowance paid to the petitioner in the past was required to be recovered. The Disciplinary Authority also passed an order withholding one increment with future effect on the ground that the petitioner had not accepted the notice served upon her and had thus acted contrary to the office discipline.

3. The petitioner thereafter went in appeal before the Tribunal constituted under the Act. In the appeal memo the petitioner contended that the order was passed in order to harass the petitioner and that even the reply filed by the petitioner by submitting the same to the Principal of the School was not forwarded to the Disciplinary Authority. It was further stated that the petitioner was residing in a rented house at Vaghdod and was paying monthly rent for which the receipt was also produced alongwith the appeal memo. A grievance was also made that proper procedure was not followed before imposing the penalty in question. The appellate

authority ultimately passed the impugned order, but the order mentioned that since the petitioner was not residing at Vaghdod and was commuting from Sander to Vaghdod, the teaching work of the school was affected and, therefore, the order withholding one increment with future effect was being upheld as reasonable.

It is against the aforesaid orders of the Disciplinary Authority and the appellate authority that the present petition is filed.

4. A perusal of the order of the Disciplinary Authority reveals that the House Rent Allowance paid to the petitioner was ordered to be recovered with effect from the date when the petitioner was not residing at the head quarter i.e. at the village where the school was situate. The petitioner's contention is that the non-forwarding of the reply by the Principal resulted into non-consideration of the petitioner's defence that the petitioner was residing in a rented house at Vaghdod and the appellate authority has also not considered the receipt produced alongwith the appeal memo. The second challenge to the impugned order is that withholding of one increment with future effect amounts to a major penalty and that, therefore, the said order could not be passed without following the procedure prescribed under the Disciplinary Appeal Rules for imposing major penalty.

5. As far as the first contention is concerned, the Court has perused the notice and a copy of the receipt produced at Annexure "A" to the petition and also at Annexure "B" to the petition. The receipt at Annexure "A' shows that Ujamram Motiram Panchal had let out the house to the petitioner at monthly rent of Rs.50/- and that the rent for the period from 1.6.1986 to 30.6.1987 amounting to Rs.650/- was received by the author of the receipt on 15.6.1987. In the first place, the receipt purports to have been signed by Panchal Chimanbhai Motiram whereas the person alleged to be landlord is Ujaram Motiram Panchal. Apart from this material discrepancy, it is not possible to believe that the landlord would accept monthly rent of the premises after the end of the year. Therefore, the defence of the petitioner that the petitioner was residing at Vaghdod cannot be accepted. It appears that the authorities had initiated proceedings pursuant to the complaints from the parents of the school students that the petitioner was irregular and, therefore, the studies of the children were suffering. There could be no reason why the parents would make such a false complaint. This coupled with the fact that the receipt produced by the petitioner cannot

be relied upon would go to show that the authorities were justified in passing the impugned order for stopping payment of House Rent Allowance to the petitioner and also for recovery of House Rent Allowance paid to the petitioner in the past. The first challenge to the impugned order must, therefore, fail.

6. As far as the second challenge to the impugned order is concerned, the Disciplinary Authority passed the order for withholding one increment with future effect on the ground that the petitioner refused to accept the notice served upon her whereas the the appellate authority confirmed the order of penalty of withholding one increment with future effect only on the ground that the petitioner was not residing at Vaghdod and, therefore, the education was suffering. If the impugned order could be upheld on merits, the Court might not have interfered with the said order, but the difficulty which has come in the way of the respondents is that the penalty of stoppage of increment/s with future effect has been considered by the Apex Court to be a major penalty for imposing which a detailed departmental inquiry is required to be held, as contrasted with the procedure prescribed for imposing minor penalty. In the case of Mohinder Singh vs. State of Punjab, 1995 Suppl. (4) SCC 433 and in the case of Kulwant Singh Gill vs. State of Punjab, 1991 Suppl. (1) SCC 504, the Hon'ble Supreme Court has held that the penalty of stoppage of increment/s with future effect amounts to a major penalty in view of the insidious effect or the resultant consequences of working out the penalty.

7. In view of the above discussion, while confirming the order passed by the authorities stopping payment of House Rent Allowance to the petitioner for not residing at Vaghdod and also the order for recovery of the amount of House Rent Allowance paid to the petitioner in the past, this Court sets aside that part of the impugned order by which the penalty of withholding one increment with future effect has been imposed on the petitioner. The respondents shall, however, be at liberty to hold a fresh inquiry in accordance with law in respect of the misconduct for which the authorities had passed the order for withholding one increment with future effect.

8. The petition is accordingly partly allowed with no order as to costs.

Sd/-

June 28, 1999 (M.S. Shah, J.)

sundar/-